

1 **POMERANTZ LLP**

2 Patrick V. Dahlstrom
3 Joshua B. Silverman
4 Louis C. Ludwig
5 10 South LaSalle, Ste. 3505
6 Chicago, Illinois 60603
7 Telephone: (312) 377-1181
8 Facsimile: (312) 377-1184
9 Email: pdahlstrom@pomlaw.com
10 jbsilverman@pomlaw.com
11 lcludwig@pomlaw.com

12 **THE ROSEN LAW FIRM, P.A.**

13 Laurence M. Rosen, Esq. (CSB# 219683)
14 275 Madison Avenue, 34th Floor
15 New York, New York 10016
16 Telephone: (212) 686-1060
17 Facsimile: (212) 202-3827
18 Email: lrosen@rosenlegal.com

19 ***Class Counsel***

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 KEITH THOMAS, RICHARD HAYES, HERB
23 SMITH, and OKLAHOMA POLICE PENSION &
24 RETIREMENT SYSTEM,

25 Plaintiffs,

26 v.

27 MAGNACHIP SEMICONDUCTOR CORP. SANG
28 PARK, TAE YOUNG HWANG, MARGARET
SAKAI, R. DOUGLAS NORBY, ILBOK LEE,
NADER TAVAKOLI, RANDAL KLEIN, MICHAEL
ELKINS, AVENUE CAPITAL MANAGEMENT II,
L.P., BARCLAYS CAPITAL INC., DEUTSCHE
BANK SECURITIES INC., CITIGROUP GLOBAL
MARKETS INC., UBS SECURITIES LLC and
NEEDHAM & COMPANY, LLC,

29 Defendants.

30 Case No.: Case No: 3:14-cv-
31 01160-JST
NOTICE OF MOTION FOR
AWARD OF ATTORNEYS'
FEES AND
REIMBURSEMENT OF
LITIGATION EXPENSES;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION
32 Date: May 10, 2018
33 Courtroom: 9 – 19th Floor
34 Time: 2:30 p.m.
35 Judge: Hon. Jon S. Tigar

1 PLEASE TAKE NOTICE that at 2:30 p.m. on May 10, 2018, or as soon thereafter as
2 counsel may be heard, before the Honorable Jon S. Tigar, in the United States District Court
3 for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California,
4 Lead Plaintiffs and Class Representatives Keith Thomas (“Thomas”) and Herb Smith
5 (“Smith”) (“Class Plaintiffs”) hereby will move for an order awarding attorneys’ fees,
6 authorizing reimbursement of expenses for Class Counsel, and reimbursement to Class
7 Plaintiffs for their time and expense in prosecuting claims against the remaining Defendant,
8 Avenue Capital Management II, L.P. (“Avenue Capital”).

9 The grounds for this motion are that the requested award of fees and expenses to Class
10 Counsel are warranted under the fee-setting and expense reimbursement criteria applicable to
11 common fund and Private Securities Litigation Reform Act (“PSLRA”) cases, and are
12 consistent with the retainer agreements between Class Counsel and Class Plaintiffs.

13 This motion is supported by the accompanying Memorandum of Points and
14 Authorities; the Joint Declaration of Laurence M. Rosen and Joshua B. Silverman in Support of
15 Motion for an Order Granting Final Approval of Class Action Settlement; and the exhibits filed
16 therewith.

17 **STATEMENT OF ISSUES TO BE DECIDED**

18 1. Whether consideration of the relevant factors justifies a fee award of 25% of the
19 Gross Settlement Fund.

20 2. Whether Class Counsel’s expenses were reasonable and necessarily incurred to
21 achieve the benefit obtained.

22 3. Whether Class Plaintiffs should receive an award in the amount of \$1,500 each.

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SPECIFIC EFFORTS OF CLASS COUNSEL.....	3
III.	REASONABLE PERCENTAGE OF THE “COMMON FUND” RECOVERED IS AN APPROPRIATE APPROACH TO AWARDING ATTORNEYS’ FEES	5
A.	The Common Fund Doctrine	5
B.	The Percentage-of-Fund Approach.....	6
C.	The Benchmark Award In This Circuit Is 25%	7
IV.	A BENCHMARK AWARD OF 25% OF THE SETTLEMENT FUND IS REASONABLE IN THIS CASE.....	8
A.	Class Counsel Achieved An Excellent Result For The Class.....	8
B.	The Risks Of The Litigation	10
C.	The Skill Required And The Quality And Efficiency Of The Work.....	11
D.	The Contingent Nature Of The Case And The Financial Burden Carried By The Class Counsel.....	11
E.	The Customary Fee	12
F.	A Lodestar Cross-Check Shows the Fee Request Is Reasonable	13
G.	The Reaction Of The Class Supports The Requested Award.....	14
V.	CLASS COUNSEL’S EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED	15
VI.	THE AWARD TO CLASS PLAINTIFFS SHOULD BE APPROVED	17
VII.	CONCLUSION.....	18

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Arenson v. Bd. of Trade</i> , 372 F. Supp. 1349 (N.D. Ill. 1974)	11
<i>Blum v. Stevenson</i> , 465 U.S. 886 (1984).....	6, 12
<i>Buccellato v. AT&T Operations, Inc.</i> , No. C10-00463-LHK, 2011 WL 4526673 (N.D. Cal. June 30, 2011)	17
<i>California v. Infineon Techs. AG (In re Dynamic Random Access Memory (DRAM) Antitrust Litig.)</i> , No. M-02-1486-PJH, 2013 U.S. Dist. LEXIS 190974 (N.D. Cal. Oct. 30, 2013)	14
<i>Destefano v. Zynga, Inc.</i> , No. 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS 17196 (N.D. Cal. Feb. 11, 2016)	15, 17
<i>Dyer v. Wells Fargo Bank, N.A.</i> , 303 F.R.D. 326 (N.D. Cal. 2014).....	14
<i>Eltman v. Grandma Lee's Inc.</i> , 1986 WL 53400 (E.D.N.Y. May 28, 1986)	11
<i>Fischel v. Equitable Life Assur.</i> , 307 F.3d 997 (9th Cir. 2002)	13
<i>Genden v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</i> , 741 F. Supp. 84 (S.D.N.Y. 1990).....	17
<i>Harris v. Marhoefer</i> , 24 F.3d 16 (9th Cir. 1994)	16
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983).....	8
<i>In re Activision Sec. Litig.</i> , 723 F. Supp. 1373 (N.D. Cal. 1989)	6, 7
<i>In re Am. Apparel S'holder Litig.</i> , No. CV 10-06352 MMM (JCGx), 2014 U.S. Dist. LEXIS 184548 (C.D. Cal. July 28, 2014)	13
<i>In re Ashanti Goldfields Sec. Litig.</i> , Civil Action No. CV-00-717 (DGT), 2005 U.S. Dist. LEXIS 28431 (E.D.N.Y. Nov. 15, 2005).....	16

1	<i>In re Cendant Corp. Sec. Litig.</i> , 404 F.3d 173 (3d Cir. 2005).....	7
2	<i>In re Cont'l Ill. Sec. Litig.</i> , 962 F.2d 566 (7th Cir. 1992)	6
3		
4	<i>In re Dairy Farmers of Am., Inc.</i> , 80 F. Supp. 3d 838 (N.D. Ill. 2015)	8
5		
6	<i>In re Equity Funding Corp. Sec. Litig.</i> , 438 F. Supp. 1303 (C.D. Cal. 1977)	11
7		
8	<i>In re Fannie Mae Sec., Derivative, & ERISA Litig.</i> , 4 F. Supp. 3d 94 (D.D.C. 2013)	16
9		
10	<i>In re Galena Biopharma, Inc. Sec. Litig.</i> , 2016 U.S. Dist. LEXIS 82693 (D. Or. June 24, 2016)	18
11		
12	<i>In re Heritage Bond Litig.</i> , No. 02-ML-1475-DT(RCx), 2005 U.S. Dist. LEXIS 13627, at *48-50 (C.D. Cal. June 10, 2005)	15
13		
14	<i>In re Immune Response Sec. Litig.</i> , 497 F. Supp. 2d 1166 (S.D. Cal. 2007).....	16, 17
15		
16	<i>In re King Res. Co. Sec. Litig.</i> , 420 F. Supp. 610 (D. Colo. 1976).....	8, 11
17		
18	<i>In re M.D.C. Holdings Sec. Litig.</i> , 1990 WL 454747 (S.D. Cal. 1990).....	12
19		
20	<i>In re McDonnell Douglas Equip. Leasing Sec. Litig.</i> , 842 F. Supp. 733 (S.D.N.Y. 1994).....	17
21		
22	<i>In re Mego Fin. Corp. Sec. Litig.</i> , 213 F.3d 454 (9th Cir. 2000)	7
23		
24	<i>In re Mercury Interactive Corp. Sec. Litig.</i> , No. 5:05-CV-03395-JF, 2011 WL 826797 (N.D. Cal. Mar. 3, 2011).....	13
25		
26	<i>In re Omnivision Techs., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008)	10, 11, 13
27		
28	<i>In re Pac. Enters. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995)	7
	<i>In re Portal Software, Inc. Sec. Litig.</i> , No. C-03-5138 VRW, 2007 U.S. Dist. LEXIS 88886 (N.D. Cal. Nov. 26, 2007)	14
	<i>In re Puda Coal Inc. Sec. Litig.</i> , No. 11-CV-2598, Order dated June 22, 2016	

1	(ECF No. 615) (S.D.N.Y.)	16
2	<i>In re Select Comfort Corp. Secs. Litig.</i> , No. 99-884 (D. Minn. Feb. 28, 2003)	8
3	<i>In re SilverCorp Metals, Inc., Securities Litigation</i> , 12-cv-9456 (Feb. 13, 2015 S.D.N.Y.).....	8
4	<i>In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig.</i> , 724 F. Supp. 160 (S.D.N.Y. 1989).....	7
5	<i>In re UnitedHealth Group Inc. Shareholder Deriv. Litig.</i> , 631 F.3d 913 (8th Cir. 2011)	17
6	<i>In re Veritas Software Corp. Sec. Litig.</i> , 396 Fed. App'x 815 (3d Cir. 2010).....	17
7	<i>In re Washington Pub. Power Supply Sys. Sec. Litig.</i> , 19 F.3d 1291 (9th Cir. 1994)	5, 8, 10, 12
8	<i>In re Wireless Facilities, Inc. Sec. Litig. II.</i> , No. 07cv482 NLS, 2008 U.S. Dist. LEXIS 128674, at *24 (S.D. Cal. Dec. 19, 2008).....	13
9	<i>Kirchoff v. Flynn</i> , 786 F.2d 320 (7th Cir. 1986)	6, 12
10	<i>Lindy Bros. Builders v. Am. Radiator & Standard Sanitary Corp.</i> , 540 F.2d 102 (3d Cir. 1976).....	10
11	<i>Morris v. Lifescan, Inc.</i> , 54 Fed. App. 663, 664 (9th Cir. 2003).....	7, 8
12	<i>Nguyen v. Radient Pharm. Corp.</i> , No. SACV 11-00406 DOC(MLGx), 2014 U.S. Dist. LEXIS 63312 (C.D. Cal. May 6, 2014)	7
13	<i>Patel v. Axesstel, Inc.</i> , No. 3:14-CV-1037-CAB-BGS, 2015 U.S. Dist. LEXIS 146949 (S.D. Cal. Oct. 23, 2015)	7
14	<i>Paul, Johnson, Alston & Hunt v. Graulty</i> , 886 F.2d 268 (9th Cir. 1989)	5, 6, 7
15	<i>Powers v. Eichen</i> , 229 F.3d 1249 (9th Cir. 2000)	7
16	<i>Ratner v. Bennett</i> , 1996 WL 243645 (E.D. Pa. May 8, 1996)	8
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	<i>Schulte v. Fifth Third Bank</i> , 2011 WL 3269340 (N.D. Ill. July 29, 2011).....	8
2	<i>Six Mexican Workers v. Arizona Citrus Growers</i> , 904 F.2d 1301 (9th Cir. 1990)	6
4	<i>Steiner v. Am. Broad. Co.</i> , 248 F. App'x 780 (9th Cir. 2007).....	14
5	<i>Steinfeld v. Discover Fin. Servs.</i> , No. C 12-01118 JSW, 2014 WL1309692 (N.D. Cal. Mar. 31, 2014).....	14
7	<i>Thornberry v. Delta Air Lines</i> , 676 F.2d 1240 (9th Cir. 1982), <i>vacated on other grounds</i> , 461 U.S. 952 (1983).....	17
9	<i>Todd v. STAAR Surgical Co.</i> , No. CV 14-5263 MWF (GJSx), 2017 U.S. Dist. LEXIS 176183 (C.D. Cal. Oct. 24, 2017)	13
10	<i>Torriani v. Tucson Elec. Power Co.</i> , 8 F.3d 1370 (9th Cir. 1993)	6
12	<i>Van Wingerden v. Cadiz, Inc.</i> , No. LA CV15-03080 JAK (JEMx), 2017 U.S. Dist. LEXIS 18800 (C.D. Cal. Feb. 8, 2017)	13
14	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759 (9th Cir. 1977)	5
16	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002)	13
17	<i>Waters v. Int'l Precious Metals Corp.</i> , 190 F.3d 1291 (11th Cir. 1999)	8
19	<u>Statutes</u>	
20	15 U.S.C. 78u-4(f)(2)(B)-(3)(A).....	7, 9, 17
21	PSLRA	7, 9, 17
22	<u>Rules</u>	
23	Federal Rule of Civil Procedure 23(e)	1
25	<u>Other Authorities</u>	
26	Richard Posner, <i>Economic Analysis of Law</i> , §21.9 (3d ed.1986)	12

MEMORANDUM OF POINTS AND AUTHORITIES

Class Plaintiffs, through their undersigned counsel, submit this memorandum of law in support of their Motion, pursuant to Federal Rule of Civil Procedure 23(e), for an Order: (1) awarding attorneys' fees of 25% of the Gross Settlement Fund, or \$1,550,000; (2) granting reimbursement of \$795,401.42 in litigation expenses; and (3) awarding Class Plaintiffs \$1,500 each. The requests here relate only to time and expenses incurred in the continuing prosecution of this Action, and do not duplicate any time or expense previously submitted to the Court.

I. INTRODUCTION¹

Class Counsel, having already secured a \$23.5 million settlement for Class Members from the primary perpetrators of the fraud at issue in this Action, has now achieved an additional \$6.2 million cash settlement against Avenue Capital, a secondary violator added in the most recent amended complaint in this Action. The efforts of Class Counsel to achieve this settlement are more fully set forth in the Joint Declaration of Laurence M. Rosen and Joshua B. Silverman filed herewith (“Joint Decl.”). Class Counsel requests an award of fees in the amount 25% of the Gross Settlement Fund or \$1,550,000 and an award of \$1,500 each to Class Plaintiffs. Class Counsel also requests reimbursement from the Gross Settlement Fund of \$795,401.42 in expenses incurred.

The current Settlement represents between 11.2% and 15.6% of Class Plaintiffs' **best case** estimate of damages recoverable from Avenue Capital (after accounting for proportional allocation of damages), above and beyond the \$23.5 million previously recovered for the Class. It is a satisfactory result by any measure, but particularly so when viewed in light of the considerable risks of summary judgment, trial, and appeal. *See* Joint Decl., ¶¶ 50-58. This

¹ Unless otherwise defined, capitalized terms herein have the same meaning as set forth in the Stipulation of Settlement dated June 14, 2017 (filed July 6, 2017, Dkt. 322-1) (the “Stipulation”).

1 recovery is the product of hard-fought negotiations over an approximately one-year period.
 2 The Parties did not reach an agreement until after extensive discovery in both the United States
 3 and the Republic of Korea, after Class Plaintiffs had obtained class certification, and after the
 4 Parties had exchanged expert reports.² Subsequently, the Parties agreed to settle this dispute in
 5 its entirety for a cash payment of \$6.2 million. *Id.* ¶ 6.

6 The reaction of the Class strongly supports the requested fees and expenses. The
 7 deadline to file objections and to request exclusion to the Settlement is April 19, 2018. To
 8 date, no objections and only one request for exclusion has been received. Declaration of
 9 Josephine Bravata Concerning Notice Dissemination and Publication, attached as Ex. 1 to the
 10 Joint Decl. (“SCS Decl.”) ¶¶ 13-14. Pursuant to the Preliminary Approval Order, over 45,000
 11 Notice forms were mailed to Class Members. *See* SCS Decl., ¶ 6. The Notice advised Class
 12 Members that Class Counsel intended to apply to the Court for an award of attorneys’ fees
 13 representing up to 25% of the Gross Settlement Fund and an award to Class Plaintiffs not to
 14 exceed \$2,000 each, and that Class Counsel would seek reimbursement of their out-of-pocket
 15 expenses not to exceed \$1,100,000. *E.g.*, SCS Decl., Ex. A.

16 The fairness and reasonableness is confirmed when cross-checked with Class Counsel’s
 17 lodestar. Class Counsel spent a total of approximately 3,500 hours of professional time having
 18 a market value of approximately \$2,187,704.25 in continuing to prosecute the claims
 19 remaining in this litigation following the prior settlement, resulting in a negative lodestar
 20 multiplier of approximately 0.71.

21 The Settlement could not have been achieved but for Class Plaintiffs’ and Class
 22 Counsel’s persistent and extensive litigation of this matter. While the Parties engaged in
 23 multiple in-person mediation sessions and frequent additional settlement negotiations, the
 24

25
 26 ² The Ninth Circuit has held that settlements obtained prior to class certification warrant
 27 additional scrutiny. *Staton v. Boeing Co.*, 327 F.3d 938, 952-53 (9th Cir. 2003). Such scrutiny
 28 is unnecessary here as a direct result of Class Counsel’s efforts.

1 Settlement Amount was proposed and accepted only after a class had been certified and further
 2 additional discovery had been obtained for the benefit of the Class. Joint Decl. ¶ 28.

3 For the reasons set forth more fully below, Class Counsel respectfully submit that such
 4 attorneys' fees and expenses are fair and reasonable under applicable legal standards and in
 5 light of the contingency risk undertaken, and should be awarded by the Court.

6 **II. SPECIFIC EFFORTS OF CLASS COUNSEL**

7 This brief description of the Action reveals not only the complexities of the case, but
 8 also the host of factual and legal issues that Class Counsel had to convincingly address in order
 9 to achieve the Settlement. As explained in the Joint Declaration (¶¶ 17-37; 61), in addition to
 10 the efforts previously identified to the Court, to achieve the Settlement with Avenue Capital,
 11 Class Counsel:

- 12 • Briefed a motion for class certification;
- 13 • Defended the depositions of Thomas and Smith;
- 14 • Met and consulted with experts in preparation for expert reports and expert discovery;
- 15 • Defended the deposition of Class Plaintiffs' expert on market efficiency, Dr. Zachary
 Nye, Ph.D.
- 16 • Took the deposition of Defendant's expert on market efficiency, Dr. Paul A. Gompers;
- 17 • Argued the motion for class certification;
- 18 • Succeeded in obtaining certification of the Class;
- 19 • Briefed issues related to certifying a second class;
- 20 • Prepared and served comprehensive document requests upon Avenue Capital;
- 21 • Served subpoenas on additional third-parties;
- 22 • Obtained and served letters rogatory upon MagnaChip's Korean auditor;
- 23 • Obtained and reviewed hundreds of thousands of pages of documents from Defendants
 in the Action and third parties;
- 24 • Engaged in meet-and-confer discussions and correspondence with Avenue Capital
 regarding the Parties' responses to discovery requests, the scope of their document
 productions, and assertions of privilege;
- 25 • Deposed more than a dozen fact and expert witnesses, including seven (7) depositions
 taken over a span of under two months in the Republic of Korea over the course of two
 week-long trips by three attorneys, where MagnaChip is headquartered;

- 1 • Responded to Defendant's discovery requests directed to Class Plaintiffs and Class
- 2 Plaintiffs' experts;
- 3 • Prepared to take additional U.S. depositions of key Avenue Capital personnel;
- 4 • Consulted with accounting and auditing experts concerning the accounting fraud alleged
- 5 in the TAC;
- 6 • Consulted with economic experts in the areas of loss causation, market efficiency, and
- 7 damages;
- 8 • Consulted with a financial expert regarding the role of investor appointees on boards and
- 9 regarding distressed investing generally;
- 10 • Drafted a response to Avenue Capital's motion to exclude Class Plaintiffs' financial
- 11 expert;
- 12 • Prepared for and participated in a full-day mediation process with a nationally regarded
- 13 third-party neutral, the Hon. Layn R. Phillips (Ret.), including drafting opening
- 14 mediation statements;
- 15 • Engaged in further mediation efforts supervised by Michelle Yoshida, an experienced
- 16 mediator working with Judge Phillips;
- 17 • Participated in continued negotiation efforts over the months following the mediation to
- 18 achieve and finalize the Settlement and document it in the Stipulation.
- 19 • Obtained a \$6.2 million settlement – in addition to the previous \$23 million settlement –
- 20 following arm's-length negotiations with Defendant;
- 21 • Consulted with experts regarding the plan of allocation and support for preliminary
- 22 approval of the Settlement; and
- 23 • Prepared the documents required for preliminary and final approval of the Settlement.

24 Class Counsel's effort to successfully resolve the remaining claims against Avenue
 25 Capital has been without compensation of any kind. Payment of attorneys' fees and
 26 reimbursement of expenses were, and always have been, wholly contingent upon the result
 27 achieved. *Id.* ¶ 59. As compensation for these efforts, Class Counsel requests that this Court
 28 award attorneys' fees of 25% of the Gross Settlement Fund, or \$1,550,000, plus reimbursement
 29 of \$795,401.42 in out-of-pocket litigation expenses. Class Counsel's 25% fee request tracks the
 30 benchmark in this Circuit, and is less than Class Counsel's actual lodestar.

31 Finally, the Court should consider the Class Members' reaction to the award sought.
 32 45,537 Court-approved Notices were mailed to potential and existent members of the Class.
 33 See SCS Decl., ¶ 6. The Notice advised Class Members of the terms of this Settlement, that

1 Class Counsel could apply for a fee of up to 25% of the Gross Settlement Fund, that Class
 2 Counsel could seek reimbursement of litigation expenses of up to \$1.1 million, and that Class
 3 Plaintiffs could seek an award not to exceed \$2,000 each. *Id.*, Ex. B. The Notice also advised
 4 Class Members' of their right to object and/or opt out. *Id.* The deadline to object or request
 5 exclusion is impending and to date, there have been no objections to the fee and expense
 6 requests, or any other part of the Settlement, and there has been only one (1) request for
 7 exclusion (that did not comply with the Court's requirement for supporting information). *See*
 8 *id.*, ¶¶ 13-14. Accordingly, the overwhelming support of the Class, and the other reasons set
 9 forth herein, demonstrate that the requested attorneys' fees and expenses and award to Class
 10 Plaintiffs are fair and reasonable.

11 **III. REASONABLE PERCENTAGE OF THE “COMMON FUND” RECOVERED IS
 12 AN APPROPRIATE APPROACH TO AWARDING ATTORNEYS’ FEES**

13 **A. The Common Fund Doctrine**

14 It has long been recognized that “a private plaintiff, or his attorney, whose efforts
 15 create, discover, increase or preserve a fund to which others also have a claim is entitled to
 16 recover from the fund the costs of his litigation, including attorneys’ fees.” *Vincent v. Hughes*
 17 *Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). In *Paul, Johnson, Alston & Hunt v. Graulty*,
 18 886 F.2d 268, 271 (9th Cir. 1989) (“*Paul, Johnson*”), the Ninth Circuit explained the equitable
 19 principle underlying such fee awards:

20 Since the Supreme Court’s 1885 decision in *Central Railroad. & Banking Co. of*
 21 *Ga. v. Pettus*, 113 U.S. 116, 5 S.Ct. 387, 28 L.Ed. 915 (1885), it is well settled
 22 that the lawyer who creates a common fund is allowed an *extra* reward, beyond
 23 that which he has arranged with his client, so that he might share the wealth of
 24 those upon whom he has conferred a benefit. [...] The amount of such a reward is
 25 that which is deemed “reasonable” under the circumstances.

26 (Emphasis in original; citations omitted). The purpose of this “common fund” doctrine is to
 27 avoid unjust enrichment, requiring “those who benefit from the creation of the fund [to] share
 28 the wealth with the lawyers whose skill and effort helped create it.” *In re Washington Pub.*
Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1300 (9th Cir. 1994) (“*WPPSS*”).

B. The Percentage-of-Fund Approach

In *Blum v. Stevenson*, 465 U.S. 886, 900 n.16 (1984), the Supreme Court recognized that under the common fund doctrine a “reasonable” fee may be based “on a percentage of the fund bestowed on the class.” In *Paul, Johnson*, 886 F.2d 268, *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990), and *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370 (9th Cir. 1993), the Ninth Circuit expressly approved the use of the percentage-of-recovery method in common fund cases.

Since *Paul, Johnson* and its progeny, district courts in this Circuit have almost uniformly shifted to the percentage method in awarding fees in representative actions. There are compelling reasons why so many courts have opted for the percentage approach in common fund cases. First, it is consistent with the practice in the private marketplace where contingent fee attorneys are customarily compensated by a percentage of the recovery.³ Second, it more closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time required under the circumstances.⁴ Third, use of the percentage-of-recovery method decreases the burden imposed on the court (by avoiding a detailed and time-consuming lodestar analysis), while assuring that the beneficiaries do not experience unnecessary delay in receiving their share of the settlement.

³ *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (“The class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client.”); *In re Activision Sec. Litig.*, 723 F. Supp. 1373 (N.D. Cal. 1989) (noting that in the marketplace, attorneys and their clients routinely negotiate 25% to 40% percentage fees).

⁴ See *Kirchoff v. Flynn*, 786 F.2d 320, 325-26 (7th Cir. 1986) (“The lawyer gains only to the extent his client gains[,]ensur[ing] a reasonable proportion between the recovery and the fees assessed to the defendant reward[ing] exceptional success . . . penaliz[ing] failure . . . [and] automatically handl[ing] compensation for the uncertainty of litigation.”).

1 *See In re Activision Secs. Litig.*, 723 F. Supp. at 1378-79.⁵

2 Indeed, the plain text of the PSLRA states that class counsel is entitled to attorneys'
 3 fees that represent a "reasonable percentage" of the damages recovered by the class. *See* 15
 4 U.S.C. § 78u-4(a)(6). *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 188 n. 7 (3d Cir.
 5 2005) ("[T]he PSLRA has made percentage-of-recovery the standard for determining whether
 6 attorney's fees are reasonable.").

7 **C. The Benchmark Award In This Circuit Is 25%**

8 In *Paul, Johnson*, 886 F.2d at 273, the Ninth Circuit originally established 25% of the
 9 fund recovered as the "benchmark" award to be adjusted upward or downward depending on the
 10 circumstances of the particular case. *Accord Powers v. Eichen*, 229 F.3d 1249, 1256-1257 (9th
 11 Cir. 2000); *but see Activision*, 723 F. Supp. at 1377 ("This court's review of recent reported
 12 cases discloses that nearly all common fund fee awards range around 30% even after thorough
 13 application of either the lodestar or twelve-factor method."); *see also Patel v. Axestel, Inc.*, No.
 14 3:14-CV-1037-CAB-BGS, 2015 U.S. Dist. LEXIS 146949, at *21 (S.D. Cal. Oct. 23, 2015)
 15 (awarding 30% fees in a securities fraud class action based on "the complexity of securities
 16 litigation, the lodestar crosscheck, and the lack of any objection from the class members");
 17 *Nguyen v. Radient Pharm. Corp.*, No. SACV 11-00406 DOC(MLGx), 2014 U.S. Dist. LEXIS
 18 63312, at *30 (C.D. Cal. May 6, 2014) (adjusting benchmark upward to award 28% fee in
 19 securities fraud class action). Indeed, it is not unusual for courts to award fees in excess of 30%
 20 in appropriate circumstances. *See, e.g., Morris v. Lifescan, Inc.*, 54 Fed. App. 663, 664 (9th Cir.
 21 2003) (approving 33% fee); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995)
 22 (approving fee equal to 33% percent of a \$12 million settlement fund); *In re Mego Fin. Corp.*
 23

24
 25
 26

 27 ⁵ *See also In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig.*, 724 F. Supp. 160, 170
 28 (S.D.N.Y. 1989) ("straight contingent fee awards [are] bereft of largely judgmental and time-
 wasting computations of lodestars and multipliers").

1 *Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (upheld fee award of 33.3% of \$1.725 million
 2 settlement).⁶

3 The guiding principle remains that a fee award should be “reasonable under the
 4 circumstances.” *WPPSS*, 19 F.3d at 1296 (citation omitted). The attorneys’ fee requested here
 5 is in line with the Ninth Circuit benchmark, and is well within the range of percentages courts
 6 in this Circuit have awarded in similar securities class action settlements.

7 **IV. A BENCHMARK AWARD OF 25% OF THE SETTLEMENT FUND IS
 8 REASONABLE IN THIS CASE**

9 **A. Class Counsel Achieved An Excellent Result For The Class**

10 In this case, although the excellent result obtained for the Class might warrant an
 11 upward adjustment, Plaintiffs only seek to be awarded the benchmark 25% fee. Courts have
 12 consistently recognized that the result achieved is a major factor to be considered in making a
 13 fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (the “most critical factor is the
 14 degree of success obtained”); *Morris*, 54 Fed. Appx. at 664 (district court, granting a 33% fee,
 15 noted that class counsel achieved exceptional results in a risky and complicated class action);
 16 *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 630 (D. Colo. 1976) (“[T]he amount of
 17 recovery, and end result achieved are of primary importance, for these are the true benefit to
 18 the client”).

19

20

21 ⁶ Courts in other jurisdictions also routinely award fees of 25% or more in similarly sized
 22 settlements. E.g., *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 842 (N.D. Ill.
 23 2015)(awarding 33-1/3% of \$46 million settlement fund); *In re SilverCorp Metals, Inc.,
 24 Securities Litigation*, 12-cv-9456 (Feb. 13, 2015 S.D.N.Y.)(awarding 25% of a \$14 million
 25 settlement); *Schulte v. Fifth Third Bank*, 2011 WL 3269340, at *31 (N.D. Ill. July 29, 2011)
 26 (“A number of fee awards in common-fund cases from within the Seventh Circuit show that an
 27 award of 33-1/3% of the settlement fund is within the reasonable range”; approving 33.3% of
 28 \$9.5 million); *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1298 (11th Cir. 1999)
 (one-third award of \$40 million); *Ratner v. Bennett*, 1996 WL 243645 (E.D. Pa. May 8, 1996)
 (35% award in securities action of \$400,000); *In re Select Comfort Corp. Secs. Litig.*, No. 99-
 884 (D. Minn. Feb. 28, 2003) (awarding 33.3% of the \$ 5,750,000 settlement).

1 The payment of \$6.2 million in cash to the Class provides an excellent recovery under
 2 the circumstances. The Settlement supplements the previous \$23.35 million recovery from
 3 primary wrongdoers with an additional \$6.2 million from Avenue Capital, creating a total
 4 recovery for MagnaChip investors of \$29.7 million. *See* Joint Decl. ¶ 10.

5 Class Plaintiffs' preliminary approval filings discussed Plaintiffs' estimation, after
 6 consulting with experts, that the maximum aggregate Class damages if the Class prevailed at
 7 trial would be approximately \$158.4 million, only a fraction of which could be recoverable
 8 from Avenue Capital under the PSLRA's proportional liability cap, 15 U.S.C. §78u-
 9 4(f)(2)(B)(1). *See* ECF No. 331 at 4; ECF No. 335 at 1. Plaintiffs further explained their view
 10 that if the Class prevailed at trial, a jury would likely allocate no more than 25% to 35% of
 11 proportional liability (and perhaps much less) to Avenue Capital, which did not directly
 12 participate in the fraud. *Id.*; ECF No. 335 at 2. Accordingly, Class Plaintiffs calculated that a
 13 best-case result at trial would yield a recovery of between \$39.6 million to \$55.4 million. *Id.*;
 14 ECF No. 335 at 2. The \$6.2 million Settlement represents between 11.2% and 15.6% of
 15 damages likely recoverable from Avenue Capital if the Class achieved a highly favorable
 16 outcome at trial. *Id.* *See* ECF No. 331 at 5; ECF 335 at 2. Therefore, the Settlement
 17 represents a significant recovery (especially considering that Class Members have already
 18 shared in the \$23.5 million settlement with other defendants).

19 This Settlement compares favorably with the median securities class action settlement
 20 between 2007 and 2016. According to Stanford University and Cornerstone Research, a
 21 defendant-oriented economic consultancy, the median securities class action settlement during
 22 those years ranged between 1.8% and 2.8% of estimated damages.⁷ As another court in this
 23 District has noted, a recovery of 6% compares favorably with the median settlement. *In re*

24
 25
 26
 27 ⁷ *See* <http://securities.stanford.edu/research-reports/1996-2016/Settlements-Through-12-2016-Review.pdf>, pp. 7.

1 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) settlement yielding 6%
2 of potential damages was “higher than the median percentage of investor losses recovered in
3 recent shareholder class action settlements”). The much higher percentage recovery here of
4 11.2% to 15.6% of damages is an outstanding result for the Class, and justifies at least a
5 benchmark award of 25%.

B. The Risks Of The Litigation

7 Numerous cases have recognized that the risks of litigation are important factors in
8 determining a fee award. *See, e.g.*, *WPPSS*, 19 F.3d at 1299-1300; *Lindy Bros. Builders v. Am.*
9 *Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 117 (3d Cir. 1976). Here, Class Plaintiffs
10 faced significant risks as to both liability and damages. A jury might easily find that Avenue
11 Capital bore no responsibility for the fraud, or the Court might rule that damages following the
12 end of the shortened Class Period it certified are not available, which would slash recoverable
13 damages by more than two-thirds.

In addition, Class Plaintiffs faced other considerable risks at trial. The claims against Avenue Capital are difficult because it is, at most, a control person—not a primary violator under the federal securities laws. Moreover, the transactions and accounting violations at issue in this Action are complex, and involve Korean-language documents and Korean witnesses. Accordingly, Class Plaintiffs' claims could prove difficult to present to a jury. *See* Joint Decl. ¶ 52. Class Plaintiffs would also face trial challenges concerning proof of control, loss causation, scienter, liability, and damages, and, even if successful there, would have still faced the risk of losing any recovery to an unfavorable ruling in a dispositive post-trial motion or a reversal of the verdict on appeal. *See* Joint Decl. ¶¶ 51-55.

Given the various risks in this Action and the strengths and weaknesses of the claims asserted against Avenue Capital, a secondary defendant, the additional \$6.2 million Settlement secured is highly favorable and in the best interests of the Class. *See* Joint Decl. ¶ 58.

C. The Skill Required And The Quality And Efficiency Of The Work

The “prosecution and management of a complex national class action requires unique legal skills and abilities” – particularly in securities class actions. *Omnivision*, 559 F. Supp. 2d at 1047. Here, the quality of Class Counsel’s work on this case is reflected in the excellent result obtained. The standing and prior experience of Class Counsel are relevant in determining fair compensation. *See, e.g., Eltman v. Grandma Lee’s Inc.*, 1986 WL 53400, at *9 (E.D.N.Y. May 28, 1986). The Joint Declaration includes a description of the background and experience of Class Counsel. *See* Exs. 2 & 3 to Joint Decl. As that submission demonstrates, Class Counsel has extensive and significant experience in the highly specialized field of securities class action litigation.

The quality of opposing counsel is also important in evaluating the quality of the work done by Class Counsel. *See, e.g., In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977); *King Res.*, 420 F. Supp. at 634; *Arenson v. Bd. of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974). Class Plaintiffs were opposed in this litigation by the nationally respected firm of Akin Gump Strauss Hauer & Feld LLP, which mounted a skillful and aggressive defense. *See* Joint Decl. ¶ 64.

At every stage of the proceedings, Class Counsel had to perform with a high level of skill, efficiency, and professionalism. In the face of strong opposition from a highly respected securities defense firm, Class Counsel successfully conducted effective discovery in both United States and Korea, obtained class certification, and settled the remaining claims in this Action on an excellent basis for the Class. Such quality, efficiency, and dedication should be rewarded.

D. The Contingent Nature Of The Case And The Financial Burden Carried By Class Counsel

The Ninth Circuit recognizes that the determination of a fair fee must include consideration of the contingent nature of the fee and the difficulties that were overcome in obtaining the settlement:

1 It is an established practice in the private legal market to reward attorneys
 2 for taking the risk of non-payment by paying them a premium over their
 3 normal hourly rates for winning contingency cases.

4 See Richard Posner, *Economic Analysis of Law*, §21.9, at 534-35 (3d ed.1986). Contingent
 5 fees in risky cases that may exceed the market value of the services if rendered on a non-
 6 contingent basis are accepted in the legal profession as a legitimate way of assuring competent
 7 representation for plaintiffs who could not afford to pay on an hourly basis regardless of
 8 whether they win or lose. *WPPSS*, 19 F.3d at 1299.

9 Class Counsel has received no compensation over the course of the litigation against
 10 Avenue Capital as the sole remaining Defendant and has incurred significant expenses in
 11 litigating for the benefit of the Class. Any fee award or expense reimbursement to Class
 12 Counsel has always been at risk and completely contingent on the result achieved and on this
 13 Court's exercise of its discretion in making any award. See Joint Decl. ¶ 65.

14 **E. The Customary Fee**

15 If this were not a class action, the customary fee arrangement would be contingent, on a
 16 percentage basis, and in the range of 30% to 40% of the recovery. See, e.g., *Blum*, 465 U.S. at
 17 903 n.* (“In tort suits, an attorney might receive one-third of whatever amount the plaintiff
 18 recovers. In those cases, therefore, the fee is directly proportional to the recovery.”); *In re*
 19 *M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, at *7 (S.D. Cal. 1990) (“In private contingent
 20 litigation, fee contracts have traditionally ranged between 30% and 40% of the total
 21 recovery.”); *Kirchoff*, 786 F.2d at 323 (40% contractual award if case had gone to trial). Thus,
 22 as the customary contingent fee in the private marketplace – 30% to 40% of the fund recovered
 23 – is even greater than the percentage-of-recovery fee requested in this case, Class Counsel’s
 24 request is quite reasonable.

25 Class Counsel’s efforts at obtaining a recovery from Avenue Capital as the last
 26 remaining Defendant were performed and the result was achieved on a wholly contingent
 27 basis, despite significant risk and in the face of determined opposition. Under these
 28 circumstances, it necessarily follows that Class Counsel is justly entitled to the award of a
 reasonable percentage fee based on the benefit conferred and the common fund obtained. The

1 fee requested is within the range of fees awarded by the courts in the Ninth Circuit in cases
 2 with similar recoveries. *See, e.g., Todd v. STAAR Surgical Co.*, No. CV 14-5263 MWF
 3 (GJSx), 2017 U.S. Dist. LEXIS 176183, at *14 (C.D. Cal. Oct. 24, 2017) (granting request for
 4 25% fee where settlement fund totaled \$7 million); *Van Wingerden v. Cadiz, Inc.*, No. LA
 5 CV15-03080 JAK (JEMx), 2017 U.S. Dist. LEXIS 18800, at *36 (C.D. Cal. Feb. 8, 2017)
 6 (approving 25% fee for \$3 million settlement); *In re Am. Apparel S'holder Litig.*, No. CV 10-
 7 06352 MMM (JCGx), 2014 U.S. Dist. LEXIS 184548, at *88 (C.D. Cal. July 28, 2014)
 8 (awarding 25% fee in \$4.8 million settlement); *In re Wireless Facilities, Inc. Sec. Litig. II.*, No.
 9 07cv482 NLS, 2008 U.S. Dist. LEXIS 128674, at *24 (S.D. Cal. Dec. 19, 2008) (approving
 10 25% fee where case settled for \$4.5 million).

11 Under all of the circumstances present here, a 25% fee plus expenses is fair and
 12 reasonable.

13 **F. A Lodestar Cross-Check Shows the Fee Request Is Reasonable**

14 Courts often compare an attorney's lodestar with a fee request made under the
 15 percentage of the fund method as a "cross-check" on the reasonableness of the requested fee.
 16 *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002); *Fischel v.*
 17 *Equitable Life Assur.*, 307 F.3d 997, 1007 (9th Cir. 2002). "[T]he lodestar calculation can be
 18 helpful in suggesting a higher percentage when litigation has been protracted [and] may
 19 provide a useful perspective on the reasonableness of a given percentage award." *Vizcaino*, 290
 20 F. 3d at 1050. In securities class actions it is common for a counsel's lodestar figure to be
 21 adjusted upward by some multiplier reflecting a variety of factors such as the effort expended
 22 by counsel, the complexity of the case, and the risks assumed by counsel.⁸

23
 24
 25 ⁸ *See, e.g., Vizcaino*, 290 F.3d at 1051-52 (approving a fee representing a 3.65 multiple of
 26 lodestar, and listing twenty-three shareholder settlements in which the average multiplier was
 27 3.28); *In re Mercury Interactive Corp. Sec. Litig.*, No. 5:05-CV-03395-JF, 2011 WL 826797, at
 28 *2 (N.D. Cal. Mar. 3, 2011) (lodestar cross-check multiplier of 3.08 "is within the acceptable
 range"); *OmniVision*, 559 F. Supp. 2d at 1048 ("[C]ourts have approved multipliers ranging

1 Here, Class Counsel requests no upward adjustment, and in fact requests a fee award
 2 significantly *less* than its lodestar. The total lodestar for Class Counsel for all work done in
 3 this Action through April 5, 2018 is \$2,187,704.25.⁹ *See* Joint Decl. Exs. 4 & 5. Thus, Class
 4 Counsel's fee request of 25% of the gross settlement fund, or \$1,550,000, is approximately
 5 0.71 times the lodestar. Courts in this Circuit have routinely found negative multipliers to
 6 satisfy the lodestar cross-check. *See, e.g., California v. Infineon Techs. AG (In re Dynamic*
 7 *Random Access Memory (DRAM) Antitrust Litig.),* No. M-02-1486-PJH, 2013 U.S. Dist.
 8 LEXIS 190974, at *129-30 (N.D. Cal. Oct. 30, 2013) (negative multiplier "alone is virtually
 9 sufficient to satisfy the cross-check requirement"); *In re Portal Software, Inc. Sec. Litig.,* No.
 10 C-03-5138 VRW, 2007 U.S. Dist. LEXIS 88886, at *42-43 (N.D. Cal. Nov. 26,
 11 2007) (negative multiplier suggests that "the requested percentage based fee is fair and
 12 reasonable"). Thus, this factor supports the requested fee.

13 **G. The Reaction Of The Class Supports The Requested Award**

14 Over 45,000 copies of the Court-approved Notice were mailed to Class Members. SCS
 15 Decl., ¶ 6. The Notice was also published on *GlobeNewswire* and *PR Newswire*, and was
 16 made available to the public on the Claims Administrator's website. *Id.*, ¶¶ 10-11. Class
 17 Members were informed in the Notice that Class Counsel would apply for attorneys' fees of up
 18 to 25% of the Settlement Fund and were advised of their right to object to Class Counsel's fee
 19 request. *Id.* Ex. B.

20
 21
 22 between 1 and 4."); *Steiner v. Am. Broad. Co.*, 248 F. App'x 780, at 783 (9th Cir. 2007)
 23 (upholding 25% fee award yielding multiplier of 6.85, finding that it "falls well within the range
 24 of multipliers that courts have allowed"); *Steinfeld v. Discover Fin. Servs.*, No. C 12-01118
 25 JSW, 2014 WL1309692, at *2-3 (N.D. Cal. Mar. 31, 2014) (finding a 3.5 multiplier reasonable);
 26 *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys'
 27 fees that resulted in lodestar multiplier of 2.83).

28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 810
 811
 812
 813
 814
 815
 816
 817
 818
 819
 820
 821
 822
 823
 824
 825
 826
 827
 828
 829
 830
 831
 832
 833
 834
 835
 836
 837
 838
 839
 840
 841
 842
 843
 844
 845
 846
 847
 848
 849
 850
 851
 852
 853
 854
 855
 856
 857
 858
 859
 860
 861
 862
 863
 864
 865
 866
 867
 868
 869
 870
 871
 872
 873
 874
 875
 876
 877
 878
 879
 880
 881
 882
 883
 884
 885
 886
 887
 888
 889
 890
 891
 892
 893
 894
 895
 896
 897
 898
 899
 900
 901
 902
 903
 904
 905
 906
 907
 908
 909
 910
 911
 912
 913
 914
 915
 916
 917
 918
 919
 920
 921
 922
 923
 924
 925
 926
 927
 928
 929
 930
 931
 932
 933
 934
 935
 936
 937
 938
 939
 940
 941
 942
 943
 944
 945
 946
 947
 948
 949
 950
 951
 952
 953
 954
 955
 956
 957
 958
 959
 960
 961
 962
 963
 964
 965
 966
 967
 968
 969
 970
 971
 972
 973
 974
 975
 976
 977
 978
 979
 980
 981
 982
 983
 984
 985
 986
 987
 988
 989
 990
 991
 992
 993
 994
 995
 996
 997
 998
 999
 1000
 1001
 1002
 1003
 1004
 1005
 1006
 1007
 1008
 1009
 1010
 1011
 1012
 1013
 1014
 1015
 1016
 1017
 1018
 1019
 1020
 1021
 1022
 1023
 1024
 1025
 1026
 1027
 1028
 1029
 1030
 1031
 1032
 1033
 1034
 1035
 1036
 1037
 1038
 1039
 1040
 1041
 1042
 1043
 1044
 1045
 1046
 1047
 1048
 1049
 1050
 1051
 1052
 1053
 1054
 1055
 1056
 1057
 1058
 1059
 1060
 1061
 1062
 1063
 1064
 1065
 1066
 1067
 1068
 1069
 1070
 1071
 1072
 1073
 1074
 1075
 1076
 1077
 1078
 1079
 1080
 1081
 1082
 1083
 1084
 1085
 1086
 1087
 1088
 1089
 1090
 1091
 1092
 1093
 1094
 1095
 1096
 1097
 1098
 1099
 1100
 1101
 1102
 1103
 1104
 1105
 1106
 1107
 1108
 1109
 1110
 1111
 1112
 1113
 1114
 1115
 1116
 1117
 1118
 1119
 1120
 1121
 1122
 1123
 1124
 1125
 1126
 1127
 1128
 1129
 1130
 1131
 1132
 1133
 1134
 1135
 1136
 1137
 1138
 1139
 1140
 1141
 1142
 1143
 1144
 1145
 1146
 1147
 1148
 1149
 1150
 1151
 1152
 1153
 1154
 1155
 1156
 1157
 1158
 1159
 1160
 1161
 1162
 1163
 1164
 1165
 1166
 1167
 1168
 1169
 1170
 1171
 1172
 1173
 1174
 1175
 1176
 1177
 1178
 1179
 1180
 1181
 1182
 1183
 1184
 1185
 1186
 1187
 1188
 1189
 1190
 1191
 1192
 1193
 1194
 1195
 1196
 1197
 1198
 1199
 1200
 1201
 1202
 1203
 1204
 1205
 1206
 1207
 1208
 1209
 1210
 1211
 1212
 1213
 1214
 1215
 1216
 1217
 1218
 1219
 1220
 1221
 1222
 1223
 1224
 1225
 1226
 1227
 1228
 1229
 1230
 1231
 1232
 1233
 1234
 1235
 1236
 1237
 1238
 1239
 1240
 1241
 1242
 1243
 1244
 1245
 1246
 1247
 1248
 1249
 1250
 1251
 1252
 1253
 1254
 1255
 1256
 1257
 1258
 1259
 1260
 1261
 1262
 1263
 1264
 1265
 1266
 1267
 1268
 1269
 1270
 1271
 1272
 1273
 1274
 1275
 1276
 1277
 1278
 1279
 1280
 1281
 1282
 1283
 1284
 1285
 1286
 1287
 1288
 1289
 1290
 1291
 1292
 1293
 1294
 1295
 1296
 1297
 1298
 1299
 1300
 1301
 1302
 1303
 1304
 1305
 1306
 1307
 1308
 1309
 1310
 1311
 1312
 1313
 1314
 1315
 1316
 1317
 1318
 1319
 1320
 1321
 1322
 1323
 1324
 1325
 1326
 1327
 1328
 1329
 1330
 1331
 1332
 1333
 1334
 1335
 1336
 1337
 1338
 1339
 1340
 1341
 1342
 1343
 1344
 1345
 1346
 1347
 1348
 1349
 1350
 1351
 1352
 1353
 1354
 1355
 1356
 1357
 1358
 1359
 1360
 1361
 1362
 1363
 1364
 1365
 1366
 1367
 1368
 1369
 1370
 1371
 1372
 1373
 1374
 1375
 1376
 1377
 1378
 1379
 1380
 1381
 1382
 1383
 1384
 1385
 1386
 1387
 1388
 1389
 1390
 1391
 1392
 1393
 1394
 1395
 1396
 1397
 1398
 1399
 1400
 1401
 1402
 1403
 1404
 1405
 1406
 1407
 1408
 1409
 1410
 1411
 1412
 1413
 1414
 1415
 1416
 1417
 1418
 1419
 1420
 1421
 1422
 1423
 1424
 1425
 1426
 1427
 1428
 1429
 1430
 1431
 1432
 1433
 1434
 1435
 1436
 1437
 1438
 1439
 1440

1 To date, there has been only one request for exclusion and no objections to the fee
 2 request. *See Id.* ¶¶ 13-14. Courts have recognized that “[t]he presence or absence of
 3 objections from the class is also a factor in determining the proper fee award.” *In re Heritage*
 4 *Bond Litig.*, No. 02-ML-1475-DT(RCx), 2005 U.S. Dist. LEXIS 13627, at *48-50 (C.D. Cal.
 5 June 10, 2005) (“conclud[ing] that the lack of significant objections to the requested fees
 6 justifies an award of one-third of the Settlement Fund[,] particularly where the number of
 7 objections to the fee was “remarkably small given the wide dissemination of notice.”); *see also*
 8 *In re Wireless Facilities*, 2008 U.S. Dist. LEXIS 128674, at *23 (“The lack of objections from
 9 potential claimants favors awarding Lead Counsel the requested amount of attorneys’ fees.”).

10 **V. CLASS COUNSEL’S EXPENSES ARE REASONABLE AND WERE
 11 NECESSARY TO ACHIEVE THE BENEFIT OBTAINED**

12 Class Counsel’s expenses are reasonable, consistent with the out-of-pocket expenses
 13 that clients typically pay in complex litigation of this type, and were necessarily incurred to
 14 achieve this \$6.2 million supplemental recovery for the Class. Class Counsel has incurred
 15 litigation expenses of \$795,401.42, for which they have not been reimbursed to date. Joint
 16 Decl. ¶ 60. This figure does not include any expenses submitted to the Court in connection
 17 with the first settlement.

18 The \$795,401.42 of expenses requested to be reimbursed are detailed in the Joint
 19 Declaration of Class Counsel. *See* Joint Decl. Exs. 4 & 5. The amount requested is
 20 substantially less than that identified in the Notice, which apprised the Class Members that
 21 Class Counsel would seek expenses in an amount not to exceed \$1.1 million. To date, no Class
 22 Member has objected to that request.

23 These expenses should be reimbursed. Consistent with other jurisdictions, “courts
 24 throughout the Ninth Circuit regularly award litigation costs and expenses—including
 25 photocopying, printing, postage, court costs, research on online databases, experts and
 26 consultants, and reasonable travel expenses—in securities class actions, as attorneys routinely
 27 bill private clients for such expenses in non-contingent litigation.” *Destefano v. Zynga, Inc.*, No.
 28

1 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS 17196, at *73 (N.D. Cal. Feb. 11, 2016); *see also*
 2 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award
 3 of attorney’s fees those out-of-pocket expenses that would normally be charged to a fee paying
 4 client”); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007)
 5 (same). Class Counsel has pursued this litigation knowing that its outstanding expenses could
 6 only be reimbursed (without interest) if the Class won at trial or obtained a settlement. Joint
 7 Decl. ¶ 59. Class Counsel has had no incentive to incur and did not incur unnecessary expenses.
 8

9 The expenses for which Class Counsel seek reimbursement were all necessary for the
 10 successful prosecution and resolution of the Action on behalf of the Class, and are of the type
 11 routinely charged to paying clients. Therefore, these expenses should be reimbursed out of the
 12 common fund. *Harris*, 24 F.3d at 19; *Immune*, 497 F. Supp. 2d at 1177. The largest cost—
 13 accounting for more than 87% of all litigation expenses—was for experts retained to address
 14 significant matters in this litigation. Zachary Nye of Stanford Consulting Group provided a
 15 market efficiency analysis, a damages analysis, a loss causation analysis, and assisted with the
 16 plan of allocation, at a cost of \$291,618. Lynn Turner of Hemming Morse and Thomas Ray
 17 provided accounting expertise, at a cost of \$217,649.50. William Purcell provided expert
 18 analysis in the area of the duties of boards of directors, at a cost of \$184,050. The expenses
 19 here are consistent with those reimbursed in other similarly complex securities fraud litigations
 20 that have progressed to expert discovery. *See, e.g., In re Ashanti Goldfields Sec. Litig.*, Civil
 21 Action No. CV-00-717 (DGT), 2005 U.S. Dist. LEXIS 28431, at *15-16 (E.D.N.Y. Nov. 15,
 22 2005) (granting reimbursement of \$1,377,825.93 in litigation expenses and noting “the
 23 largest expense, totaling over \$ 500,000, was for the services of expert witnesses. . . . This is not
 24 unusual in securities litigation actions.”); *In re Puda Coal Inc. Sec. Litig.*, No. 11-CV-2598,
 25 Order dated June 22, 2016 (ECF No. 615) (S.D.N.Y.) (granting reimbursement of
 26 \$2,089,573.76 in litigation expenses including expert fees); *In re Fannie Mae Sec., Derivative*,
 27
 28

1 & ERISA Litig., 4 F. Supp. 3d 94, 113-14 (D.D.C. 2013) (granting reimbursement of
 2 \$10,027,188.94 in “expert and consultant fees”).

3 Reimbursement is also proper with respect to the other requested expenses. Economy
 4 air travel, lodging and costs incidental to travel such as meals, taxis and parking, are routinely
 5 reimbursed. *See, e.g., Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244 (9th Cir. 1982),
 6 *vacated on other grounds*, 461 U.S. 952 (1983); *Harris*, 24 F.3d at 19; *Immune*, 497 F.Supp. 2d
 7 at 1177; *In re McDonnell Douglas Equip. Leasing Sec. Litig.*, 842 F. Supp. 733, 746 (S.D.N.Y.
 8 1994); *Genden v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 741 F. Supp. 84, 86 (S.D.N.Y.
 9 1990). These expenses were necessary and reasonable in amount, particularly considering the
 10 depositions of seven witnesses produced in Korea. Similarly, mediation fees, court recorder
 11 costs, computerized legal research, photocopying, e-discovery and document retrieval and filing
 12 costs should be reimbursed. *See Zynga*, 2016 U.S. Dist. LEXIS 17196, at *73; *Immune*, 497 F.
 13 Supp. 2d at 1177; *In re UnitedHealth Group Inc. Shareholder Deriv. Litig.*, 631 F.3d 913, 918-
 14 19 (8th Cir. 2011).

16 **VI. THE AWARD TO CLASS PLAINTIFFS SHOULD BE APPROVED**

17 Class Plaintiffs Thomas and Smith also request that the Court award them \$1,500 each
 18 to compensate for the significant additional time each expended in representing the Class in the
 19 prosecution of claims against Avenue Capital. The PSLRA provides that courts are empowered
 20 to approve such awards to reimburse plaintiffs for reasonable costs and expenses related to the
 21 representation of the class. *See* 15 U.S.C. §78u-4(a)(4). Class Plaintiffs each met with counsel
 22 to prepare for a deposition and sat for a deposition, produced documents in response to Avenue
 23 Capital’s discovery requests, communicated with counsel about the Action and helped evaluate
 24 settlement proposals. *See* Joint Decl. ¶ 61. Although a small compensatory award of \$1,500
 25 was awarded to Thomas in connection with the first settlement, courts routinely award lead
 26 plaintiffs more than the total requested here. *See, e.g., In re Veritas Software Corp. Sec. Litig.*,
 27 396 Fed. App’x 815, 816 (3d Cir. 2010) (\$15,000 for each lead plaintiff); *Buccellato v. AT&T*
 28

1 *Operations, Inc.*, No. C10-00463-LHK, 2011 WL 4526673, at *4 (N.D. Cal. June 30, 2011)
 2 (\$20,000 to lead plaintiff, \$5,000 to class representatives); *In re Galena Biopharma, Inc. Sec.*
 3 *Litig.*, 2016 U.S. Dist. LEXIS 82693, at *42 (D. Or. June 24, 2016) (\$5,000 to each lead
 4 plaintiff).

5 In short, an award of \$1,500 to each Class Plaintiff is warranted.

6 **VII. CONCLUSION**

7 Securities class actions are complex and laden with risk. Many times class counsel, after
 8 expending thousands of hours of time and hundreds of thousands of dollars of expenses,
 9 receives no compensation whatsoever. Here, there was no guarantee that Class Plaintiffs'
 10 claims against Avenue Capital would bear any fruit. This complex litigation has been
 11 extremely hard-fought, with Avenue Capital represented by experienced and equally determined
 12 defense counsel. Without any assurance of success, Class Plaintiffs and their counsel pursued
 13 these additional claims to an exceptional conclusion. This additional Settlement represents an
 14 excellent supplemental recovery for behalf of the Class and reflects the skill, dedication, and
 15 tenacity of Class Counsel. Class Counsel respectfully request that the Court approve the fee and
 16 expense application and enter the Order submitted herewith awarding Class Counsel 25% of the
 17 Gross Settlement Fund plus reimbursement of \$795,401.42 of expenses, and an award of \$1,500
 18 each to Class Plaintiffs Thomas and Smith.

19 Dated: April 5, 2018

20 Respectfully Submitted,

21 **POMERANTZ LLP**

22 /s/ Joshua B. Silverman
 23 Patrick V. Dahlstrom
 24 Joshua B. Silverman
 25 Louis C. Ludwig
 26 10 South LaSalle, Ste. 3505
 27 Chicago, Illinois 60603
 28 Telephone: (312) 377-1181
 Facsimile: (312) 377-1184
 Email: pdahlstrom@pomlaw.com
 jbsilverman@pomlaw.com
 lcludwig@pomlaw.com

Marc I. Gross
Jeremy A. Lieberman
Michael J. Wernke
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (212) 661-8665
Email: migross@pomlaw.com
jalieberman@pomlaw.com
mjwernke@pomlaw.com

THE ROSEN LAW FIRM, P.A.

Laurence M. Rosen, Esq. (CSB# 219683)
275 Madison Avenue, 34th Floor
New York, New York 10016
Telephone: (212) 686-1060
Facsimile: (212) 202-3827
Email: lrosen@rosenlegal.com

Class Counsel

GLANCY PRONGAY & MURRAY LLP

Lionel Z. Glancy (CSB# 134180)
Robert V. Prongay (CSB# 270796)
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160
Email: info@glancylaw.com

Liaison Counsel